

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPLICATION NO.946 OF 2007

1.Shamsuddin Mohammed Kunhi, &
2.Mohammed Abbas Ali. ...Applicants.

Versus

The State of Maharashtra ...Respondent.

.....
Mr.G.M.Savagave, Adv. for the Applicants.
Mrs.A.S.Pai, APP, for the State.
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CORAM : SMT.V.K.TAHILRAMANI, J.

DATED : 18th April, 2007.

P.C.:

1. Heard the learned Advocate for the Applicants and the learned APP for the State.

2. The applicants-orig.accused Nos.1 & 2 are seeking bail in C.R.No.267 of 2005 of Pimpri Police Station, Pune. The said case has been now transferred to Crime Branch, Pune. The said case is under Sections 364-A, 302 read with 34 of IPC and under Sections 3(1)(i), 3(1)(ii), 3(2) and 3(4) of the MCOC Act, 1999.

3. It is the prosecution case that the son of

the complainant was kidnapped by coaccused Alibhai. Thereafter, the complainant received phone calls demanding ransom of Rs.2 crore, which was eventually settled at Rs.15 lacs. It is the case of the prosecution that the present applicants collected the said amount of Rs.15 lacs and handed it over to the coaccused who is the kidnapper. It is an admitted fact that applicant No.1 is a hawala agent from Mumbai and the complainant came to Mumbai and gave money to applicant No.1 in his office.

4. The prosecution has relied on the statement of the complainant and witness Suresh Rupeja who has stated that the amount of Rs.15 lacs was handed over by the complainant to applicant No.1 and at that time applicant No.2 was accompanying them. These witnesses have stated that applicant No.1 took money and handed it over to applicant No.2 to count the same. In addition to this, the prosecution has relied on the telephone conversation between applicant No.1 and coaccused Ali who is the kidnapper.

5. The learned Advocate for the applicants has

also placed reliance on various conversations which have been relied upon by the prosecution and which are part of the chargesheet. He has further submitted that the applicant No.1 is a Hawala Agent and the applicants had no knowledge nor they had any reason to believe that the person for whom applicant No.1 was collecting money is a part of an organised crime syndicate. In support of this contention, reliance was placed on the conversation between the kidnapper and the complainant wherein the complainant - who is residing in Pune was asked by the kidnapper whether he found any person who would deliver the money. Reliance is placed on the conversation where the kidnapper told the complainant that the person who will be coming to collect the money is not his person but he is a Hawalawala.

6. On the other hand, the learned APP has relied on the telephone conversation wherein the kidnapper has given the cell number of the present applicant to the complainant as the person who would collect the money. The learned APP submitted that after collecting the money it was forwarded to the kidnapper which is clear from the

conversation dated 25.8.2005 at 1:34 p.m. wherein the kidnapper informed the complainant that he had received the payment and the child would be released within two or three hours. So also reliance is placed on the conversation between the present applicant and the kidnapper dated 25.8.2005 at 12:30 p.m wherein the applicant informed the kidnapper that the payment has been received.

7. The learned Advocate for the applicants has placed reliance on the conversation dated 24.8.2005 at 5:46 p.m. wherein the kidnapper had conversation with applicant No.1, wherein the kidnapper asked applicant No.1 whether in the long term if money was to be called for he could rely for the same on applicant No.1. In response thereto, applicant No.1 replied that money could be so called. However, he enquired whether there was any "lafda" - i.e. anything suspicious. This conversation shows that applicant No.1 did not have any knowledge or reason to believe that the person with whom he was dealing with was in any way connected with an organised crime syndicate. So also from the statement of the complainant, it

is seen that after receiving money applicant No.1 gave him a receipt for the said money. when the complainant asked applicant No.1 whether he has the telephone number of the kidnapper, applicant No.1 informed him that he (the applicant) did not have the number and further he said, the complainant must be having the number. When the complainant gave the applicant the number the applicant immediately stated that the number is from Karachi. The applicant has given various personal details to the complainant and even given a receipt to the complainant in his handwriting. These facts and the conversation he had with the complainant and the kidnapper shows that applicant was not aware that he was dealing with any person who was connected with an organised crime syndicate.

8. As far as applicant No.2 is concerned, there is no material except the statements of complainant and witness Suresh Rupeja wherein they have stated that he counted the money given to him by applicant No.1.

9. As far as these two applicants are

concerned, the investigation is over and the charge-sheet has been filed. Moreover, besides the present case, they have a clean record.

10. In this view of the matter, *prima facie*, I am of the opinion that the applicants are not guilty of an offence under the MCOC Act. Hence, I am inclined to grant bail to the applicants.

11. The applicants Shamsuddin Mohammed Kunhi and Mohammed Abbas Ali to be released on bail in the sum of Rs.30,000/- each with one or two sureties to make up the said amount. The applicant shall report to the concerned Police Station twice a week i.e. on Monday and Thursday, till conclusion of the trial.

12. Application is disposed of accordingly.

(SMT.V.K.TAHILRAMANI, J.)